

**Report for:** Leader's Decision 4th January 2021

**Title:** Attendance at meetings of an authority by a Member

**Report authorised by:** Zina Etheridge, Chief Executive

**Lead Officer:** Ayshe Simsek, Democratic Services & Scrutiny Manager  
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**Ward(s) affected:** N/A

**Report for Key/  
Non Key Decision:** N/A

## 1. Describe the issue under consideration

- 1.1 To seek approval of Councillor Hinchcliffe's ill health as a reason for failing to attend Council meetings. He would otherwise automatically cease to be a member after 6 months, i.e. after 12<sup>th</sup> January 2021. This report proposes to extend that period for 2 months, to 12<sup>th</sup> March 2021.
- 1.2 In accordance with the Council's Constitution, Full Council would normally approve a Member extension of required attendance. However, although it is the long-established practice of most local authorities to treat this as a non-executive function, following leading Counsel advice in April 2020, it was advised that Under section 9D Local Government Act 2000 all functions of a local authority are executive functions unless the contrary is specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Following this advice, on the 7<sup>th</sup> of May and subsequent to a Full Council attendance extension decision on the 19<sup>th</sup> of March 2020, the Leader took a non key decision to extend the requirement for Cllr Hinchcliffe to attend a meeting of the Council, until the 8<sup>th</sup> of September. Councillor Hinchcliffe was able to attend meetings on July 9<sup>th</sup> and July 13<sup>th</sup> 2020.
- 1.3 Further to confirmation from the Leader of the Liberal Democrat Group of the continuing ill health of Cllr Hinchcliffe and advising that he will be unable to attend a Council meeting prior to the 12<sup>th</sup> of January 2021, and in line with previous Counsel advice, it is proposed to extend the requirement to attend a Council meeting, through executive decision making, by 2 months to allow time for recovery and attendance at a Council meeting by the 12<sup>th</sup> of March.

**2. Cabinet Member Introduction**  
N/A

**3. Recommendations**

- 3.1 To note that Councillor Justin Hinchcliffe has been unable to attend Council meetings due to ill health, and the last meeting he attended was on the 13<sup>th</sup> of July 2020.
- 3.2 To approve that Councillor Hinchcliffe will continue to be a Member of this Council until the 12<sup>th</sup> of March even if he does not attend a meeting of the authority (as defined in section 85(2) Local Government Act 1972) due to ill health; and
- 3.3 To note that if Cllr Hinchcliffe does not attend a meeting of the authority (as defined in section 85(2) Local Government Act 1972) by 12<sup>th</sup> of March, he will cease to be a member after that date.

#### **4. Reasons for decision**

- 4.1 The Leader is requested to approve the above recommendations to allow Councillor Hinchcliffe the opportunity to recover from a period of ill health and retain his membership on the Council.
- 4.2 If the reason for Councillor Hinchcliffe's failure to attend meetings is not approved before the expiry of 6 months from his last attendance (i.e. by 13<sup>th</sup> July 2020), he will automatically cease to be a member of the Council, as a result of section 85(1) Local Government Act 1972.
- 4.3 The extension of 2 months is thought to be appropriate given Councillor Hinchcliffe's ill health. This will also allow an assessment of his further support needs, and preparations to be taken forward for a bi-election, in parallel to the GLA elections, if required.

#### **5. Alternative options considered**

- 5.1 The Leader could do nothing. However, Councillor Hinchcliffe continues to be unable to attend meetings and, if his extension is not approved, he will automatically cease to be a member of the Council after the 12<sup>th</sup> of January 2021.

#### **6. Background information**

- 6.1 The Democratic Services & Scrutiny Manager was previously notified that due to ill health Councillor Justin Hinchcliffe, in his role as a member of the Council, had not been able to attend any meetings of the authority since 9<sup>th</sup> of December 2019. The Chief Executive and Monitoring Officer were subsequently notified. The Full Council approved an extension on the 19<sup>th</sup> of March to allow Cllr Hinchcliffe the opportunity to attend a council meeting until the 8<sup>th</sup> of June 2020. Further to Counsel advice being received, it was agreed to treat this as a decision for the executive. Therefore, a 'belts and braces' approach was considered necessary to avoid any difficulties on this issue and the approval of the executive was also sought. On the 7<sup>th</sup> of May 2020, the Leader agreed a 3month extension of the requirement to attend a meeting of the Council to the 8<sup>th</sup> of September.

- 6.2 Cllr Hinchcliffe's health improved and he was able to attend meetings of Planning Committee on the 9<sup>th</sup> of July and Full Council on the 13<sup>th</sup> of July. Due to the nature of Cllr Hinchcliffe's ill health, there has been continuing consideration given to his support needs and the opportunity provided to attend a Council meeting. The Chief Whip of Liberal Democrat Group spoke with the Democratic Services and Scrutiny Manager on the 15<sup>th</sup> of December on the need to extend Cllr Hinchcliffe's requirement to attend a Council meeting to allow him the opportunity to attend a meeting and continue as a member of the Council. A formal notification was received on the 21 December from the Leader of the Liberal Democrat Group confirming Cllr Hinchcliffe's ill health and the reasons for extension of his requirement to attend a meeting.
- 6.3 It is proposed that an extension of 2 months is appropriate given Councillor Hinchcliffe's continuing ill health and taking into account the number of meetings attended in the previous 12 months. This would also allow preparations to be taken forward for a bi-election in parallel to the GLA elections, if required in May 2021.
- 6.4 The Constitution at Part 6 Member's Allowance Scheme Paragraph 11.19 provides that a Member who is sick will continue to receive the basic allowance as long as they remain a Councillor. They will also continue to receive any Special Responsibility Allowance (SRA) for a six-month period. Extension of this period of leave will require prior 2 months' written notice to be given to the Political Leader of the respective political group. If the extended leave is agreed by that Political Leader, a report will be compiled to seek approval from Full Council, before the point of the 6 months' leave expiry, for the extension of this leave.

## 7. **Statutory Officers comments**

### **Finance**

- 7.1 Councillor Hinchcliffe would continue to receive his Member Allowance payment, which is provided for in the current budget and would have no further budgetary impact.

### **Legal**

- 7.2 Section 85 Local Government Act 1972 (*Vacation of office by failure to attend meetings*) provides that a member of a local authority will cease to be a member if he fails to attend any meeting of the authority throughout a period of six consecutive months from his last attendance, unless the failure is due to a reason approved by the authority before the expiry of that period.
- 7.3 Section 85(2) Local Government Act 1972 defines what is meant by a meeting of the authority. This includes Full Council and all committees and subcommittees.
- 7.4 Under section 9D Local Government Act 2000 all functions of a local authority are executive functions unless the contrary is specified in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Those regulations

do not refer to section 85 Local Government Act 1972 and so this report treats it as an executive function.

**8. Use of Appendices**

N/A

**9. Local Government (Access to Information) Act 1985**

9.1 The following papers have been used in the preparation of this report:

- Report to Full Council on 19<sup>th</sup> March 2020
- Non – key Leader’s Decision on 7<sup>th</sup> of May 2020
- The Council’s Constitution